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INTERSTATE COMMERCE COMMISSION

EXECUTED IN 10 COUNTERPARTS

OF WHICH THIS IS NO. 9

CONDITIONAL SALE AGREEMENT

Dated as of May 15, 1970

among

INTERNATIONAL RAMCO, INC.,

CAVAN EQUIPMENT CORPORATION

and

**THE CHESAPEAKE AND OHIO
RAILWAY COMPANY**

AGREEMENT AND ASSIGNMENT

Dated as of May 15, 1970

between

INTERNATIONAL RAMCO, INC.

and

**MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY,
*As Agent***

CONDITIONAL SALE AGREEMENT dated as of May 15, 1970 among the corporation named in Item 1 of Annex A hereto (hereinafter called the Vendor or Manufacturer, as more particularly set forth in Article 27 hereof), CAVAN EQUIPMENT CORPORATION, a New York corporation (hereinafter called the Company), and THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation (hereinafter sometimes called the Guarantor or the Lessee).

WHEREAS the Manufacturer has agreed to construct, sell and deliver to the Company, and the Company has agreed to purchase, the railroad equipment described in Annex B hereto (hereinafter called the Equipment);

WHEREAS the Company is executing a lease of the Equipment as of the date hereof to the Lessee in substantially the form annexed hereto as Annex C (hereinafter called the Lease), and the Guarantor is willing to guarantee to the Vendor the due and punctual payment of all sums payable by, and the due and punctual performance of all other obligations of, the Company under this Agreement and has joined in this Agreement for the purpose of setting forth the terms and conditions of such guaranty and making certain further agreements as hereinafter set forth;

Now, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto hereby agree as follows:

ARTICLE 1. *Construction and Sale.* Pursuant to this Agreement, the Manufacturer will construct the Equipment at its plant set forth in Annex B hereto and will sell and deliver the Equipment to the Company and the Company will purchase from the Manufacturer and accept delivery of and pay for (as hereinafter provided) the Equipment, each unit of which will be a new standard-gauge unit of railroad equipment, constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may have been agreed upon

in writing by the Manufacturer, the Company and the Guarantor (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of the Equipment will conform to all Department of Transportation and Interstate Commerce Commission requirements and specifications reasonably interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement.

ARTICLE 2. *Delivery.* The Manufacturer will deliver the various units of the Equipment to the Company, at the point specified in, and in accordance with, the delivery schedule set forth in Annex B hereto; *provided, however*, that no delivery of any unit of the Equipment shall be made until this Agreement and the Lease have been filed pursuant to Section 20c of the Interstate Commerce Act.

The Manufacturer's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Manufacturer's reasonable control, including, but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, or delays in receiving necessary materials.

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered, accepted and settled for pursuant to Article 3 hereof on or before November 15, 1970 (unless such date is extended by the Company, the Guarantor and the Vendor by appropriate written agreement), shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion (a) the Vendor, the Company and the Guarantor shall execute an agreement supplemental hereto limiting this Agreement to the Equipment theretofore delivered, **accepted and settled for hereunder and** (b) if such exclusion resulted from one or more of the causes referred to in the next preceding paragraph, a separate agreement shall

be entered into between the Manufacturer and the Guarantor providing for the purchase of such excluded Equipment by the Guarantor, on the terms herein specified, payment to be made in cash on delivery of such Equipment either directly or, in case Guarantor shall arrange therefor, by means of a conditional sale, equipment trust or other appropriate method of financing the purchase, as the Guarantor shall determine.

The Equipment shall be subject to inspection and approval prior to delivery by inspectors or other authorized representatives appointed jointly by the Company and the Guarantor (who may be employees of the Guarantor), and the Manufacturer shall grant to such inspectors or such authorized representatives reasonable access to its plant. From time to time upon the completion of the construction of each unit or of a number of units of the Equipment, such unit or units shall be presented to such inspector or other authorized representative for inspection at the place designated for delivery of the Equipment and, if each such unit conforms to the specifications, such inspector or representative shall execute and deliver to the Manufacturer, in such number of counterparts or copies as may reasonably be requested, a certificate of delivery and acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Company and are marked in accordance with the provisions of Article 9 hereof; *provided, however*, that the Manufacturer shall not thereby be relieved of its warranty contained or referred to in Article 14 hereof.

On delivery of each of the units of Equipment hereunder and acceptance thereof on behalf of the Company as aforesaid, the Company assumes with respect thereto the responsibility and risk of loss.

ARTICLE 3. *Purchase Price and Payment.* The base price per unit of the Equipment is set forth in Annex B hereto. The base price, which may include freight charges, if any, from the Manufacturer's plant to the point of delivery, is subject to such increase or decrease as is agreed to by the

Manufacturer, the Company and the Guarantor. The term "Purchase Price" as used herein shall mean the base price as so increased or decreased. If on any Closing Date (as hereinafter defined in this Article 3) the aggregate of the Invoiced Purchase Prices (as hereinafter defined in this Article 3) for which settlement under this Agreement and the other Conditional Sale Agreements referred to in Item 2 of Annex A hereto (hereinafter called the Other Agreements) has theretofore been and is then being made, would, but for the provisions of this sentence, exceed \$9,052,680 (or such higher amount as the Company may at its option agree to), the Manufacturer (and any assignee of the Manufacturer) and the Guarantor will, upon request of the Company, enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for, specified by the Company, as will, after giving effect to such exclusion and any concurrent exclusion under the Other Agreements, reduce such aggregate Invoiced Purchase Prices to not more than \$9,052,680 (or such higher amount as aforesaid), and the Guarantor agrees to purchase any such unit or units so excluded from the Agreement from the Manufacturer for cash on the date such unit or units would otherwise have been settled for under this Agreement either directly or, in case the Guarantor shall arrange therefor, by means of a conditional sale, equipment trust or such other appropriate method of financing as the Guarantor shall determine.

The Equipment shall be settled for in such number of groups of units of the Equipment delivered to and accepted by the Company as is provided in Item 3 of Annex A hereto (each such group being hereinafter called a Group), unless the Company, the Guarantor and the Manufacturer shall otherwise agree; *provided, however*, that the aggregate Purchase Price of a Group settled for under this Agreement and the Other Agreements (i) prior to July 13, 1970 shall not exceed \$2,000,000 plus the amount then payable pursuant to subparagraph (a) of the third paragraph of Article 3 of this Agreement and the Other Agreements, and (ii) prior

to August 27, 1970 shall not exceed \$5,500,000 plus the amount then payable pursuant to subparagraph (a) of the third paragraph of Article 3 of this Agreement and the Other Agreements. The term "Closing Date" with respect to any Group shall mean such date, occurring not less than five business days following presentation by the Manufacturer to the Company of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Manufacturer by written notice delivered to the Company and any assignee of the Manufacturer at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

The Company hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

- (a) On each Closing Date with respect to each Group
 - (i) an amount equal to the percentage set forth in Item 7 of Annex A hereto multiplied by the aggregate Purchase Price of such Group plus (ii) the amount by which (x) the percentage set forth in Item 8 of Annex A hereto multiplied by the aggregate of the Purchase Price of all units of the Equipment covered by this Agreement and the purchase price of all units of railroad equipment covered by the Other Agreements for which settlement has theretofore and is then being made, as set forth in the invoice or invoices therefor (said invoiced prices being herein called the Invoiced Purchase Prices), exceeds (y) the sum of \$6,646,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this clause (ii) of this subparagraph (a) and clause (ii) of subparagraph (a) of the third paragraph of Article 3 of the Other Agreements (said excess of clause (x) over clause (y) being hereinafter called the Excess Amount); *provided, however*, that if settlement is also being made on such Closing Date for units of railroad equipment under the Other Agreements,

the amount payable pursuant to clause (ii) of this subparagraph (a) shall be that proportion of the Excess Amount which the Invoiced Purchase Price payable on such Closing Date under this Agreement is of the aggregate of the Invoiced Purchase Prices payable on such Closing Date under this Agreement and the Other Agreements;

(b) In 20 consecutive semiannual instalments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment in the Group for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The first instalment of the portion of the Purchase Price of each Group of Equipment payable pursuant to subparagraph (b) of the preceding paragraph (herein called the Conditional Sale Indebtedness) shall be payable on November 15, 1975, and subsequent instalments shall be payable semiannually thereafter on each May 15 and November 15 to and including May 15, 1985 (or if any such date is not a business day on the next preceding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such Indebtedness was incurred at the rate of $9\frac{3}{4}\%$ per annum and such interest shall be payable, to the extent accrued, on each May 15 and November 15, commencing November 15, 1970. The payments to be made on each of the 20 semiannual Payment Dates shall be payable in immediately available Baltimore or federal funds. The principal amount of Conditional Sale Indebtedness payable on each of the 20 semiannual Payment Dates shall be calculated on such a basis that the aggregate of the principal and interest payable on each Payment Date shall be substantially equal and such 20 instalments of principal and interest will completely amortize the Conditional Sale Indebtedness. The Company will furnish to the Vendor and the Guarantor promptly after each Closing Date a sched-

ule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Company will pay interest at the rate of 10 $\frac{3}{4}$ % per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 5 hereof, the Company shall not have the privilege of prepaying any of the Conditional Sale Indebtedness prior to the date it becomes due.

It is agreed that the obligation of the Company to pay to the Manufacturer any amount required to be paid pursuant to the third paragraph of this Article 3 with respect to any Group of Equipment is specifically subject to the condition precedent that no event of default of the Guarantor specified herein or of the Lessee under the Lease, or any event which with the lapse of time and/or notice provided for herein or in the Lease would constitute such an event of default, shall have occurred and be continuing.

ARTICLE 4. *Title to the Equipment.* The Vendor shall and hereby does retain security title to and property in the Equipment until the Company shall have made all of the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Company or the Guarantor as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 5 hereof, when and only when the Vendor shall have been paid the full amount of the Purchase Price of all the Equipment, together with interest and all other payments as herein provided, and all the Company's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Company, will, at the expense of the Company, execute appropriate instruments confirming such passage to the Company of title to and property in the Equipment free of all liens and encumbrances created or retained hereby and deliver such instruments to the Company at its address specified in Article 23 hereof, and will, at the expense of the Company, execute in the same manner and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Company to the Equipment, and will pay to the Company any money paid to the Vendor pursuant to Article 5 hereof and not theretofore applied as therein provided.

The Company hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such instruments or to file such certificate within a reasonable time after written demand of the Company.

ARTICLE 5. *Casualty Occurrences.* In the event that any unit of the Equipment shall be or become worn out, lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being herein called Casualty Occurrences), the Company shall, within 14 days after it

shall have determined that such unit has suffered a Casualty Occurrence (or as of such earlier date as the Company may receive notice thereof under the Lease), notify the Vendor with respect thereto. On the interest payment date next succeeding such notice, the Company shall pay to the Vendor a sum equal to the Casualty Value of such unit suffering a Casualty Occurrence as of the date of such payment and shall file with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied to prepay the Conditional Sale Indebtedness of the Group of which such unit was a part and the Company will promptly furnish to the Vendor and the Guarantor a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor may request, calculated as provided in the fourth paragraph of Article 3 hereof.

Upon payment by the Company to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, full title to and property in such unit shall pass to and vest in the Company, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Company, will execute and deliver to the Company, at the expense of the Company, an appropriate instrument confirming such passage to the Company of all the Vendor's right, security title and interest in such unit, in recordable form in order that the Company may make clear upon the public records the title of the Company to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article 5), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of a Group made pursuant to Article 3 hereof shall be deemed to be a payment on each unit of the Equipment

in such Group in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Group in which such unit is included.

Although the Guarantor shall not be required to maintain insurance on any unit of the Equipment, the Guarantor agrees that the benefits of any insurance maintained by it upon the units of the Equipment will be made available to the Company and the Vendor, as their interests may appear, to the extent the Guarantor is permitted to do so under such policies of insurance.

ARTICLE 6. *Obligations of Guarantor.* The Vendor will give to the Guarantor a copy of any notice or other communication given by the Vendor to the Company, at the time of giving such notice or communication to the Company, and the Vendor will not exercise any right, power or remedy with respect to any default hereunder and no notice to the Company of any such default shall be effective, unless the Vendor shall have given to the Guarantor written notice or a copy of its notice to the Company of such default. The Vendor also agrees that, to the extent that the Lessee is authorized to do so pursuant to any provision of the Lease, the Vendor will accept performance by the Guarantor of any covenant, agreement or obligation of the Company contained in this Agreement with the same effect as though performed by the Company including, without limitation, the taking of any action which may be required in order to cure a default of the Company hereunder. In consideration of the foregoing, and for other value received, the Guarantor hereby agrees with the Vendor as follows: The Guarantor, for value received, hereby unconditionally guarantees to the Vendor by endorsement (through its execution hereof) the due and punctual payment of that portion of the Purchase Price of the Equipment payable pursuant to subparagraph (b) of the third paragraph of Article 3 hereof and interest thereon, and the due and punctual performance of all obligations of the Company and the due and punctual payment of any and all sums payable by the Company under this Agreement (except for the

obligations of the Company to make payment of the sums payable by the Company pursuant to subparagraph (a) of the third paragraph of Article 3 hereof) when due, whether at stated maturity or by declaration or otherwise, and in case any such payments or obligations are not so made or performed the Guarantor agrees punctually to pay or perform the same, irrespective of any enforcement against the Company of any of the rights of the Vendor hereunder.

The Guarantor hereby agrees that its obligations hereunder shall be unconditional (and shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever) irrespective of the genuineness, validity, regularity or enforceability of this Agreement or any other circumstance which might otherwise constitute a legal or equitable discharge of a surety or guarantor or any other circumstances which might otherwise limit the recourse of the Vendor to the Company. The Guarantor hereby waives diligence, presentment, demand of payment, protest, any notice of any assignment hereof in whole or in part or of any default hereunder and all notices with respect to this Agreement and all demands whatsoever hereunder. No waiver by the Vendor of any of its rights hereunder and no action by the Vendor to enforce any of its rights hereunder or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder.

In the event that the Guarantor shall make any payments to the Vendor on account of its guaranty hereunder, the Guarantor shall, by subrogation, be entitled to the rights of the Vendor against the Company and with respect to any units of the Equipment to the extent of the amount so paid, but such rights shall be subordinate in all respects to the rights of the Vendor.

ARTICLE 7. *Maintenance and Repairs.* The Company agrees that, at its own cost and expense, it will maintain and keep each unit of the Equipment in good order and repair. The Company agrees that during the period that any portion of the Conditional Sale Indebtedness in respect of any

Group remains outstanding and unpaid, the Company will not assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America and that during such period any use of any unit of the Equipment outside the United States of America will be limited to incidental and temporary use in Canada or Mexico.

ARTICLE 8. *Reports and Inspection.* On or before November 1 in each year, commencing with the year 1971, the Company will cause to be furnished to the Vendor, in such number of counterparts as the Vendor may request, an accurate statement as of the preceding June 30 (a) showing the amount, description and numbers of the Equipment then covered hereby, the amount, description and numbers of all units of the Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of delivery hereunder of the Equipment, in the case of the first such statement), and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request, and (b) stating that, in the case of all units of the Equipment repainted or repaired during the period covered by such statement, the markings required by Article 9 hereof have been preserved or replaced.

ARTICLE 9. *Identification Marks.* The Company will cause each accepted unit of the Equipment to be kept numbered with its identifying number as set forth in Annex B and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such unit, in letters not less than one inch in height, the words, "MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, AGENT, OWNER" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Vendor to such unit and the rights of the Vendor under

then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law.

At any time during the continuance of a Declaration of Default, the Vendor with or without the retaking of possession thereof at its election and upon reasonable notice to the Company, the Guarantor and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Company, or of any other party (including the Guarantor) claiming by, through or under the Company, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however*, that if prior to such sale or prior to the making of a contract for such sale, the Company should tender full payment of the entire indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking, holding and preparing the Equipment for disposition and arrangement for the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company. The proceeds of such sale, or of any lease or other disposition of the Equipment as provided hereunder, less the attorneys' fees and any other expenses incurred by the Vendor in taking possession of, removing, storing and so disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety, or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the

Vendor may determine; *provided, however*, that the Company and the Guarantor shall be given written notice of such sale as provided hereinabove. If such sale shall be a private sale, it shall be subject to the right of the Company and the Guarantor to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability to the Company or the Guarantor (except to the extent of surplus money received as hereinafter provided in this Article 18), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor from the Company hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor, except as such exercise may expressly be limited herein. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others, except as such exercise may expressly be limited herein. No delay, except where time limits are expressly herein provided, or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

All sums of money realized by the Vendor under the remedies herein provided shall be applied, *first* to the payment of the expenses and liabilities of the Vendor herein undertaken to be paid, *second* to the payment of interest

on the unpaid Purchase Price of the Equipment accrued and unpaid and *third* to the payment of the unpaid Purchase Price of the Equipment. If, after applying as aforesaid all sums of money realized by the Vendor, there shall remain any amount due to it under the provisions of this Agreement, the Company shall pay the amount of such deficiency to the Vendor upon demand, and, if the Company shall fail to pay the full deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Company and the Guarantor. If, after applying as aforesaid all sums realized by the Vendor there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Company or the Guarantor, as the case may be.

The Company will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 18 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

ARTICLE 19. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any state shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Company and the Guarantor to the full extent permitted by law, to the end that this Agreement shall be deemed to be an agreement of conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Company and the Guarantor, to the full extent permitted by

law, hereby waive all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Vendor's rights hereunder and any and all rights of redemption.

ARTICLE 20. *Extension Not a Waiver.* Any extension of time for payment hereunder or other indulgence duly granted to the Company shall not otherwise alter or affect the Vendor's rights or the obligations of the Company or the Guarantor hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Company's or the Guarantor's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults therein.

ARTICLE 21. *Recording.* The Company will (i) prior to the delivery and acceptance hereunder of any unit of the Equipment, cause this Agreement and any assignment hereof by the Company, and any supplements hereto and thereto relating to such unit and (ii) prior to the settlement hereunder for any unit of the Equipment, cause the first assignment by the Manufacturer and any supplements thereto relating to such unit, in each case to be filed, recorded or deposited and refiled, rerecorded or redeposited, with the Interstate Commerce Commission and otherwise as may be required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its security title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Company will promptly cause to be furnished to the Vendor evidences of such filing, recording or depositing, and an opinion or opinions of counsel for the Lessee with respect thereto (but not with respect to any assignment by the Com-

pany referred to in clause (i) above), satisfactory to the Vendor.

ARTICLE 22. *Payment of Expenses.* The Company will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Manufacturer and the Guarantor) incident to the preparation and execution of this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent or trustee, if the first assignee is an agent or trustee), or any instrument supplemental thereto, including all fees and expenses of special counsel for the first assignee of this Agreement. For the purposes of this Article 22, if the first assignee is an agent or trustee, then any successor thereto shall be considered the first assignee.

ARTICLE 23. *Notice.* Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Company, at 20 Grist Mill Lane, Plandome Mills, Manhasset, New York 11030,

(b) to the Guarantor, at 2 North Charles Street, Baltimore, Maryland 21201,

(c) to the Manufacturer, at the address specified in Item 6 of Annex A hereto or

(d) to any assignee of the Vendor, or of the Company, at such address as may have been furnished in writing to the Company or the Vendor, as the case may be, and to the Guarantor, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement. The Company represents and warrants that its chief

be hereunto affixed and duly attested, all as of the date first above written.

INTERNATIONAL RAMCO, INC.,

by *Karl F. Long*
President of International
Car Co. Division.

[CORPORATE SEAL]

Attest:

Herman L. Lader
Asst. Secretary.

CAVAN EQUIPMENT CORPORATION,

[CORPORATE SEAL]

by *James G. Mills*
President.

Attest:

Michael T. Schaffield
Secretary.

THE CHESAPEAKE AND OHIO RAILWAY
COMPANY,

[CORPORATE SEAL]

by *A. C. Knight*
Treasurer.

Attest:

E. D. Martin
Assistant Secretary.

APPROVED AS TO FORM

C. C. Kimball
GENERAL ATTORNEY
6/11/70

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this *10th* day of June, 1970, before me personally appeared *James G. Wells*, to me personally known, who, being by me duly sworn, says that he is President of CAVAN EQUIPMENT CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

John Holbrook
Notary Public

[NOTARIAL SEAL]

JOHN HOLBROOK
Notary Public, State of New York
No. 31-1831950
Qualified in New York County
Commission Expires March 30, 1971

STATE OF MARYLAND }
CITY OF BALTIMORE } ss.:

On this *11th* day of June, 1970, before me personally appeared L. C. ROIG, JR., to me personally known, who, being by me duly sworn, says that he is the Treasurer of THE CHESAPEAKE AND OHIO RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Russell E. Schreiber
Notary Public

[NOTARIAL SEAL]

RUSSELL E. SCHREIBER
NOTARY PUBLIC
My Commission Expires July 1, 1970

STATE OF NEW YORK }
COUNTY OF ERIE } ss.:

On this 8th day of June, 1970, before me personally appeared KARL F. LONG, to me personally known, who, being by me duly sworn, says that he is President of International Car Co. Division of INTERNATIONAL RAMCO, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Alfred J. Neumaister
.....
Notary Public

[NOTARIAL SEAL]

ALFRED J. NEUMAISTER
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1972

ANNEX A

- Item 1: International RAMCO, Inc., an Illinois corporation.
- Item 2: Three Conditional Sale Agreements dated as of May 15, 1970 among the Company, the Guarantor and General Motors Corporation (Electro-Motive Division).
- Item 3: The Equipment shall be settled for in not more than 2 Groups of units of the Equipment delivered to and accepted by the Company hereunder.
- Item 4: The Manufacturer warrants that the units of the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 1 of the Conditional Sale Agreement to which this Annex is attached (hereinafter called the Agreement), and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Company or the Guarantor and not manufactured by the Manufacturer) and workmanship under normal use and service, the Manufacturer's obligation under this paragraph being limited to making good at its plant any part or parts of any unit of Equipment which shall, within one year after the delivery of such unit to the Company, be returned to the Manufacturer with transportation charges prepaid and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective. The foregoing warranty of the Manufacturer is expressly in lieu of all other warranties, expressed or implied, and of all other obligations or liabilities on the part of the Manufacturer, except for its obligations under or referred to in Articles 1, 2, 3 and 15 of the Agreement, and the Manufac-

turer neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid.

The Manufacturer further agrees that neither the inspection as provided in Article 2 of the Agreement, nor any examination, nor the acceptance of any units of Equipment as provided in Article 2 of the Agreement shall be deemed a waiver or a modification by the Company of any of its rights under this Item 4.

Item 5: Except in cases of articles and materials specified by the Company or the Guarantor and not manufactured by the Manufacturer and in cases of designs specified by the Company or the Guarantor and not developed or purported to be developed by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Company and the Guarantor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Company or the Guarantor, its assigns, or the users of the Equipment because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any article or material infringing or claimed to infringe on any patent or other similar right. The Company and the Guarantor likewise will indemnify, protect and hold harmless the Manufacturer from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Manufacturer because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any article or material specified by the Company or the Guarantor and not manufactured by the Manu-

facturer or of any design specified by the Company or the Guarantor and not developed or purported to be developed by the Manufacturer which infringes or is claimed to infringe on any patent or other similar right. The Manufacturer agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Company and the Guarantor every claim, right and cause of action which Manufacturer has or hereafter shall have against the seller or sellers of any designs, articles or materials specified by the Company or the Guarantor and purchased or otherwise acquired by the Manufacturer for use in or about the construction or operation of the Equipment, or any unit thereof, on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on any patent or other similar right. The Manufacturer further agrees to execute and deliver to the Company and the Guarantor or the users of the Equipment, all and every such further assurance as may be reasonably requested by the Company or the Guarantor, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Manufacturer will give notice to the Company and the Guarantor of any claim known to the Manufacturer from which liability may be charged against the Company or the Guarantor hereunder and the Company and the Guarantor will give notice to the Manufacturer of any claim known to the Company or the Guarantor from which liability may be charged against the Manufacturer hereunder. Said covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due hereunder, the satisfaction and discharge of the Agreement or the termination of the Agreement in any manner.

ITEM 6: P. O. Box 73, Buffalo, New York 14223.

ITEM 7: 26.1%.

ITEM 8: 73.9%

ADDITIONAL AGREEMENT

As of the date hereof, the Guarantor is assigning to the Company, pursuant to an Assignment of Purchase Agreement in the form of Annex D hereto, its rights under a purchase agreement dated April 17, 1969 with the Manufacturer, to which assignment the Manufacturer, by its execution hereof, hereby consents.

then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law.

At any time during the continuance of a Declaration of Default, the Vendor with or without the retaking of possession thereof at its election and upon reasonable notice to the Company, the Guarantor and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Company, or of any other party (including the Guarantor) claiming by, through or under the Company, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however*, that if prior to such sale or prior to the making of a contract for such sale, the Company should tender full payment of the entire indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking, holding and preparing the Equipment for disposition and arrangement for the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company. The proceeds of such sale, or of any lease or other disposition of the Equipment as provided hereunder, less the attorneys' fees and any other expenses incurred by the Vendor in taking possession of, removing, storing and so disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety, or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the

Vendor may determine; *provided, however*, that the Company and the Guarantor shall be given written notice of such sale as provided hereinabove. If such sale shall be a private sale, it shall be subject to the right of the Company and the Guarantor to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability to the Company or the Guarantor (except to the extent of surplus money received as hereinafter provided in this Article 18), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor from the Company hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor, except as such exercise may expressly be limited herein. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others, except as such exercise may expressly be limited herein. No delay, except where time limits are expressly herein provided, or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

All sums of money realized by the Vendor under the remedies herein provided shall be applied, *first* to the payment of the expenses and liabilities of the Vendor herein undertaken to be paid, *second* to the payment of interest

on the unpaid Purchase Price of the Equipment accrued and unpaid and *third* to the payment of the unpaid Purchase Price of the Equipment. If, after applying as aforesaid all sums of money realized by the Vendor, there shall remain any amount due to it under the provisions of this Agreement, the Company shall pay the amount of such deficiency to the Vendor upon demand, and, if the Company shall fail to pay the full deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Company and the Guarantor. If, after applying as aforesaid all sums realized by the Vendor there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Company or the Guarantor, as the case may be.

The Company will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 18 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

ARTICLE 19. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any state shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Company and the Guarantor to the full extent permitted by law, to the end that this Agreement shall be deemed to be an agreement of conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Company and the Guarantor, to the full extent permitted by

law, hereby waive all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Vendor's rights hereunder and any and all rights of redemption.

ARTICLE 20. *Extension Not a Waiver.* Any extension of time for payment hereunder or other indulgence duly granted to the Company shall not otherwise alter or affect the Vendor's rights or the obligations of the Company or the Guarantor hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Company's or the Guarantor's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults therein.

ARTICLE 21. *Recording.* The Company will (i) prior to the delivery and acceptance hereunder of any unit of the Equipment, cause this Agreement and any assignment hereof by the Company, and any supplements hereto and thereto relating to such unit and (ii) prior to the settlement hereunder for any unit of the Equipment, cause the first assignment by the Manufacturer and any supplements thereto relating to such unit, in each case to be filed, recorded or deposited and refiled, rerecorded or redeposited, with the Interstate Commerce Commission and otherwise as may be required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its security title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Company will promptly cause to be furnished to the Vendor evidences of such filing, recording or depositing, and an opinion or opinions of counsel for the Lessee with respect thereto (but not with respect to any assignment by the Com-

pany referred to in clause (i) above), satisfactory to the Vendor.

ARTICLE 22. *Payment of Expenses.* The Company will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Manufacturer and the Guarantor) incident to the preparation and execution of this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent or trustee, if the first assignee is an agent or trustee), or any instrument supplemental thereto, including all fees and expenses of special counsel for the first assignee of this Agreement. For the purposes of this Article 22, if the first assignee is an agent or trustee, then any successor thereto shall be considered the first assignee.

ARTICLE 23. *Notice.* Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Company, at 20 Grist Mill Lane, Plandome Mills, Manhasset, New York 11030,

(b) to the Guarantor, at 2 North Charles Street, Baltimore, Maryland 21201,

(c) to the Manufacturer, at the address specified in Item 6 of Annex A hereto or

(d) to any assignee of the Vendor, or of the Company, at such address as may have been furnished in writing to the Company or the Vendor, as the case may be, and to the Guarantor, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement. The Company represents and warrants that its chief

be hereunto affixed and duly attested, all as of the date first above written.

INTERNATIONAL RAMCO, INC.,

by *Karl F. Lory*
President of International
Car Co. Division.

[CORPORATE SEAL]

Attest:

Herman L. Lader
Asst. Secretary.

CAVAN EQUIPMENT CORPORATION,

[CORPORATE SEAL]

by *James G. Mills*
President.

Attest:

Michael T. Schaffield
Secretary.

THE CHESAPEAKE AND OHIO RAILWAY
COMPANY,

[CORPORATE SEAL]

by *A. C. Knight*
Treasurer.

Attest:

E. D. Martin
Assistant Secretary.

APPROVED AS TO FORM

C. C. Kimball
GENERAL ATTORNEY
6/11/70

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this *10th* day of June, 1970, before me personally appeared *James G. Wells*, to me personally known, who, being by me duly sworn, says that he is President of CAVAN EQUIPMENT CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

John Holbrook
Notary Public

[NOTARIAL SEAL]

JOHN HOLBROOK
Notary Public, State of New York
No. 31-1831950
Qualified in New York County
Commission Expires March 30, 1971

STATE OF MARYLAND }
CITY OF BALTIMORE } ss.:

On this *11th* day of June, 1970, before me personally appeared L. C. ROIG, JR., to me personally known, who, being by me duly sworn, says that he is the Treasurer of THE CHESAPEAKE AND OHIO RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Russell E. Schreiber
Notary Public

[NOTARIAL SEAL]

RUSSELL E. SCHREIBER
NOTARY PUBLIC
My Commission Expires July 1, 1970

STATE OF NEW YORK }
COUNTY OF ERIE } ss.:

On this 8th day of June, 1970, before me personally appeared KARL F. LONG, to me personally known, who, being by me duly sworn, says that he is President of International Car Co. Division of INTERNATIONAL RAMCO, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Alfred J. Neumaister
.....
Notary Public

[NOTARIAL SEAL]

ALFRED J. NEUMAISTER
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1972

ANNEX A

- Item 1: International RAMCO, Inc., an Illinois corporation.
- Item 2: Three Conditional Sale Agreements dated as of May 15, 1970 among the Company, the Guarantor and General Motors Corporation (Electro-Motive Division).
- Item 3: The Equipment shall be settled for in not more than 2 Groups of units of the Equipment delivered to and accepted by the Company hereunder.
- Item 4: The Manufacturer warrants that the units of the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 1 of the Conditional Sale Agreement to which this Annex is attached (hereinafter called the Agreement), and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Company or the Guarantor and not manufactured by the Manufacturer) and workmanship under normal use and service, the Manufacturer's obligation under this paragraph being limited to making good at its plant any part or parts of any unit of Equipment which shall, within one year after the delivery of such unit to the Company, be returned to the Manufacturer with transportation charges prepaid and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective. The foregoing warranty of the Manufacturer is expressly in lieu of all other warranties, expressed or implied, and of all other obligations or liabilities on the part of the Manufacturer, except for its obligations under or referred to in Articles 1, 2, 3 and 15 of the Agreement, and the Manufac-

turer neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid.

The Manufacturer further agrees that neither the inspection as provided in Article 2 of the Agreement, nor any examination, nor the acceptance of any units of Equipment as provided in Article 2 of the Agreement shall be deemed a waiver or a modification by the Company of any of its rights under this Item 4.

Item 5: Except in cases of articles and materials specified by the Company or the Guarantor and not manufactured by the Manufacturer and in cases of designs specified by the Company or the Guarantor and not developed or purported to be developed by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Company and the Guarantor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Company or the Guarantor, its assigns, or the users of the Equipment because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any article or material infringing or claimed to infringe on any patent or other similar right. The Company and the Guarantor likewise will indemnify, protect and hold harmless the Manufacturer from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Manufacturer because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any article or material specified by the Company or the Guarantor and not manufactured by the Manu-

facturer or of any design specified by the Company or the Guarantor and not developed or purported to be developed by the Manufacturer which infringes or is claimed to infringe on any patent or other similar right. The Manufacturer agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Company and the Guarantor every claim, right and cause of action which Manufacturer has or hereafter shall have against the seller or sellers of any designs, articles or materials specified by the Company or the Guarantor and purchased or otherwise acquired by the Manufacturer for use in or about the construction or operation of the Equipment, or any unit thereof, on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on any patent or other similar right. The Manufacturer further agrees to execute and deliver to the Company and the Guarantor or the users of the Equipment, all and every such further assurance as may be reasonably requested by the Company or the Guarantor, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Manufacturer will give notice to the Company and the Guarantor of any claim known to the Manufacturer from which liability may be charged against the Company or the Guarantor hereunder and the Company and the Guarantor will give notice to the Manufacturer of any claim known to the Company or the Guarantor from which liability may be charged against the Manufacturer hereunder. Said covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due hereunder, the satisfaction and discharge of the Agreement or the termination of the Agreement in any manner.

ITEM 6: P. O. Box 73, Buffalo, New York 14223.

ITEM 7: 26.1%.

ITEM 8: 73.9%

ADDITIONAL AGREEMENT

As of the date hereof, the Guarantor is assigning to the Company, pursuant to an Assignment of Purchase Agreement in the form of Annex D hereto, its rights under a purchase agreement dated April 17, 1969 with the Manufacturer, to which assignment the Manufacturer, by its execution hereof, hereby consents.

ANNEX B

<u>Type</u>	<u>Manufacturer's Specification</u>	<u>Manufacturer's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Delivery</u>
Cupola Type Cabooses	No. 386 dated 12/16/69	Kenton, Ohio	55	3260- 3314	\$25,800	\$1,419,000	June to August, 1970 F.O.B. Kenton, Ohio, for delivery to Marion, Ohio

LEASE OF RAILROAD EQUIPMENT

by and between

CAVAN EQUIPMENT CORPORATION

and

**THE CHESAPEAKE AND OHIO RAILWAY
COMPANY**

Dated as of May 15, 1970

LEASE OF RAILROAD EQUIPMENT, dated as of May 15, 1970, between CAVAN EQUIPMENT CORPORATION, a New York corporation (hereinafter called the Lessor), and THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation (hereinafter called the Lessee).

WHEREAS the Lessor and the Lessee have entered into a conditional sale agreement dated as of May 15, 1970 (hereinafter called the Conditional Sale Agreement), with INTERNATIONAL RAMCO, INC. (hereinafter referred to as the Manufacturer), wherein the Manufacturer has agreed to manufacture, sell and deliver to the Lessor certain railroad equipment; and

WHEREAS the Manufacturer has assigned its interests in the Conditional Sale Agreement to MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent (hereinafter referred to as the Vendor); and

WHEREAS the Lessee desires to lease the units of said equipment described in Schedule A hereto, or such lesser number of such units as are delivered and accepted and settled for under the Conditional Sale Agreement on or prior to November 15, 1970 (hereinafter called the Units), at the rentals and for the term and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder, subject to all the rights and remedies of the Vendor under the Conditional Sale Agreement:

§ 1. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be tendered to the Lessee at the point or points within the United States of America at which

such Unit is delivered to the Lessor under the Conditional Sale Agreement. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Unit is found to be in good order, to accept delivery of such Unit and to execute and deliver to the Lessor and to the Manufacturer a certificate of acceptance and delivery (hereinafter called the Certificate of Delivery); whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 2. *Rentals.* The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 30 consecutive semi-annual payments payable on May 15 and November 15 of each year commencing November 15, 1970. The first such semiannual payment shall be in an amount equal to 0.02126% of the Purchase Price (as such term is defined in the Conditional Sale Agreement) of each Unit subject to this Lease for each day elapsed from the Closing Date under the Conditional Sale Agreement (as defined in the Conditional Sale Agreement) in respect of such Unit to November 15, 1970; the next nine such semiannual payments shall each be in an amount equal to 3.8269% of the Purchase Price of each Unit subject to this Lease; and the last 20 such semiannual payments shall each be in an amount equal to 6.2325% of the Purchase Price of each such Unit. If any of the payment dates referred to above is not a business day, the payment shall be payable on the next succeeding business day.

The Lessor irrevocably instructs the Lessee to make such of the payments provided for in this Lease including but not limited to the payments required under § 6 of this Lease for the account of the Lessor, care of Mercantile-Safe Deposit and Trust Company, Calvert and Baltimore Streets, Baltimore, Maryland 21203, Attention of Corporate Trust Department. Such payments shall be made in immediately available Baltimore or federal funds and shall be applied to satisfy the obligations of the Lessor under the Conditional Sale Agreement and, so long as no event of default under the Conditional Sale Agreement shall have occurred and be con-

tinuing, any balance shall be paid directly to the Lessor at its offices at 20 Grist Mill Lane, Plandome Mills, Manhasset, New York 11030.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or the Manufacturer or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Units from whatever cause, the prohibition of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

§ 3. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 6 and 9 hereof, shall terminate on the date on which the final semiannual payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder or under the Conditional Sale Agreement, are subject to the rights of the Vendor under the Conditional Sale Agree-

ment. If an event of default should occur under the Conditional Sale Agreement, the Vendor may terminate this Lease (or rescind its termination) to the extent that this Lease covers units of the Equipment covered by the Conditional Sale Agreement, all as provided therein unless the Lessee is not in default under this Lease or under the Conditional Sale Agreement. If a Declaration of Default (as defined in the Conditional Sale Agreement) should be made under the Conditional Sale Agreement due to an event of default not occasioned by an act or omission of the Lessee hereunder or not attributable to the Lessee under the Conditional Sale Agreement, and if such Declaration of Default shall not have been rescinded by the Vendor within 30 days of the making thereof, or if the Vendor theretofore has indicated either in writing to the Lessor or the Lessee or by the commencement of the remedies specified under Article 18 of the Conditional Sale Agreement, that it will not rescind such Declaration of Default, the Lessee, without penalty, may terminate this Lease, without, however, in any way affecting Lessee's obligations as Guarantor under the Conditional Sale Agreement.

§ 4. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Annex B to the Conditional Sale Agreement and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the following words:

“MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,
AGENT, OWNER”

or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor or the Vendor to such Unit and the rights of the Lessor under this Lease and the Conditional Sale Agreement and of the Vendor under the Conditional Sale Agreement. The Lessee will not place any such Unit in

operation or exercise any control or dominion over the same until such names and words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Lessee may cause the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§ 5. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state or Federal taxes (other than any Federal income tax payable by the Lessor in consequence of the receipt of payments provided herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it it would otherwise be obligated to pay or reimburse as herein provided), assessments or license fees and any charges, fines or penalties in connection therewith (hereinafter called impositions) hereafter levied or imposed upon or in connec-

tion with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Conditional Sale Agreement, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however*, that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the property or rights of the Lessor hereunder or under the Conditional Sale Agreement. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Vendor pursuant to Article 10 of the Conditional Sale Agreement not covered by the foregoing paragraph of this § 5, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Article 10.

In the event any reports with respect to impositions are required to be made on the basis of individual Units, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimburse-

ment of any impositions, pursuant to this § 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§ 6. *Payment for Casualty Occurrences.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall, within eight days after it shall have determined that such Unit has suffered a Casualty Occurrence, fully inform the Lessor and the Vendor in regard thereto. On the next succeeding rental payment date the Lessee shall pay to the Lessor an amount equal to the accrued rental for such Unit to the date of such payment plus a sum equal to the Casualty Value, as hereinafter defined, of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. In the event of the complete destruction of such Unit, the Lessee shall also pay the Lessor the salvage value of such Unit which will be based upon its net scrap value, computed at the current quoted price per gross ton of Number 1 railroad heavy melting steel scrap at Pittsburgh, Pennsylvania, on the date of the Casualty Occurrence, less an allowance of \$4.50 per gross ton for dismantling such Unit. Upon such payment of the salvage value of such Unit, the title to such Unit shall pass to and vest in the Lessee. In the event of a taking or requisition of any Unit by condemnation or otherwise, the Lessor shall be entitled to receive the proceeds of any award receivable in respect thereof; *provided, however*, that in such event the Lessee shall be entitled to a refund (or credit) of an amount

equal to the Casualty Value of the Unit in question or to the amount of such award, whichever is less.

The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price applicable to such Unit as is set forth in the following schedule opposite the number of such rental payment date:

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
1	105.000%	16	89.467%
2	105.000	17	86.432
3	105.000	18	83.251
4	105.000	19	79.920
5	105.000	20	76.431
6	105.000	21	72.776
7	105.000	22	68.947
8	105.000	23	64.936
9	105.000	24	60.735
10	105.000	25	56.334
11	102.703	26	51.724
12	100.295	27	46.896
13	97.774	28	41.838
14	95.133	29	36.539
15	92.365	30	31.000

Except as hereinabove in this § 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

§ 7. *Annual Reports.* On or before November 1 in each year commencing with the year 1971, the Lessee will cause to be furnished to the Lessor and the Vendor an accurate statement, as of the preceding June 30, (a) showing the amount, description and numbers of the Units then leased hereunder, the amount, description and numbers of all Units that may have suffered a Casualty Occurrence during the preceding twelve months (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and

spective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Unit.

§ 11. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. Unless the Lessee otherwise consents, from and after any such assignment all rentals and other payments made hereunder shall be paid by the Lessee to the account of the Lessor, care of the Vendor (or any assignee of the Vendor) and shall be applied by the Vendor (or such assignee) to satisfy the obligations of the Lessor under the Conditional Sale Agreement accrued at the time such payments are due hereunder and any balance shall be paid to the Lessor. All the rights of the Lessor hereunder (including but not limited to rights under §§ 2, 5, 6, 9 and 14) shall inure to the benefit of the Lessor's assigns (including the partners of any such assignee if such assignee is a partnership). Whenever the Lessor is referred to in this Lease it shall apply and refer to each assignee of the Lessor.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. In addition, the Lessee, at its own expense, will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance

unto affixed and duly attested, all as of the date first above written.

CAVAN EQUIPMENT CORPORATION,

by
President.

[CORPORATE SEAL]

Attest:

.....
Secretary.

THE CHESAPEAKE AND OHIO RAILWAY
COMPANY,

by
Treasurer.

[CORPORATE SEAL]

Attest:

..... APPROVED AS TO FORM
Assistant Secretary.

.....
GENERAL ATTORNEY

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this day of June, 1970, before me personally appeared to me personally known, who, being by me duly sworn, says that he is President of CAVAN EQUIPMENT CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

[NOTARIAL SEAL]

STATE OF MARYLAND }
CITY OF BALTIMORE } ss.:

On this day of June, 1970, before me personally appeared L. C. ROIG, JR., to me personally known, who, being by me duly sworn, says that he is the Treasurer of THE CHESAPEAKE AND OHIO RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

[NOTARIAL SEAL]

SCHEDULE A

<u>Type</u>	<u>Manufacturer's Specification</u>	<u>Manufacturer's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Delivery</u>
Cupola Type Cabooses	No. 386 dated 12/16/69	Kenton, Ohio	55	3260- 3314	\$25,800	\$1,419,000	June to August, 1970 F.O.B. Kenton, Ohio, for delivery to Marion, Ohio

ANNEX D

ASSIGNMENT OF PURCHASE AGREEMENT

KNOW ALL MEN BY THESE PRESENTS, that as of May 15, 1970, THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation (hereinafter called the Assignor), in consideration of the sum of \$10 and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, DOES HEREBY SELL, ASSIGN, TRANSFER AND SET OVER UNTO CAVAN EQUIPMENT CORPORATION, a New York corporation (hereinafter called the Assignee), all the Assignor's right, title and interest in and to the purchase agreement dated April 17, 1969, (hereinafter called the Purchase Agreement), between the Assignor and INTERNATIONAL RAMCO, INC. (hereinafter called the Manufacturer), in so far as it relates to the railroad equipment (hereinafter called the Equipment) described in Annex B to a Conditional Sale Agreement dated as of May 15, 1970 (hereinafter called the Conditional Sale Agreement), among the Assignee, the Assignor and the Manufacturer; together with all and singular the Equipment and all right, title and interest now owned or hereafter acquired by the Assignor in and to the Equipment and in and to the Purchase Agreement, except as provided in the Lease of Railroad Equipment, dated as of May 15, 1970, between the Assignor and the Assignee.

To have and to hold all and singular the Equipment and the Purchase Agreement to the Assignee and its assigns for its own use forever.

In furtherance of and not in limitation of the foregoing, the Assignor recognizes that, concurrent with the execution and delivery of this Assignment, the purchase of the Equipment is being arranged pursuant to the Conditional Sale Agreement and that the Conditional Sale Agreement permits (under Article 3 thereof) the exclusion of all or any portion of the Equipment from the Conditional Sale Agreement under the circumstances described therein. In respect thereof, the Assignor covenants with the Assignee and the Manufacturer, as a third party beneficiary hereof, that, in the event of any such exclusion of units of the Equipment from the Conditional Sale Agreement, the Assignor

will be obligated to accept all such units of Equipment and to pay the full purchase price therefor at the time of delivery, so long as such units of the Equipment shall have been completed and delivered by the Manufacturer, such payment to be made in cash on delivery of such units of Equipment, either directly or, in case the Assignor shall arrange therefor, by means of a conditional sale, equipment trust or other appropriate method of financing, as the Assignor shall determine; *provided, however*, that the Assignor warrants that none of the units of the Equipment has been delivered by the Manufacturer and no payment has been made in respect thereof to the Manufacturer.

The Assignor does hereby represent that it is the lawful owner, free from all encumbrances, of the Purchase Agreement and that the Assignor has the right to sell and assign the Purchase Agreement as set forth herein and that the Assignor will warrant and defend this Assignment against the lawful claims and demands of all persons.

Settlement for the units of Equipment to be acquired from the Manufacturer will be made under the Conditional Sale Agreement as provided in Article 3 of the Conditional Sale Agreement.

IN WITNESS WHEREOF, the Assignor has caused this Assignment to be duly executed as of the date first above written.

THE CHESAPEAKE AND OHIO RAILWAY
COMPANY,

by
Treasurer.

[CORPORATE SEAL]

APPROVED AS TO FORM

Attest:

.....
GENERAL ATTORNEY

.....
Assistant Secretary.

The foregoing Assignment is hereby
accepted as of May 15, 1970.

CAVAN EQUIPMENT CORPORATION,

by
President.

AGREEMENT AND ASSIGNMENT dated as of May 15, 1970, between the corporation first named following the testimonium below (hereinafter called the Manufacturer) and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, acting as Agent under a Finance Agreement dated as of May 15, 1970 (hereinafter called the Finance Agreement and said Trust Company, so acting, being hereinafter called the Assignee).

WHEREAS the Manufacturer, CAVAN EQUIPMENT CORPORATION (hereinafter called the Company), and THE CHESAPEAKE AND OHIO RAILWAY COMPANY (hereinafter called the Guarantor), have entered into a Conditional Sale Agreement dated as of May 15, 1970 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Company of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Manufacturer hereby assigns, transfers, and sets over unto the Assignee, its successors and assigns:

(a) All the right, security title and interest of the Manufacturer in and to each unit of the Equipment;

(b) All the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 2 thereof, in the first paragraph and in subparagraph (a) of the third paragraph of Article 3 thereof, in the last paragraph of Article 16 thereof and

spective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Unit.

§ 11. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. Unless the Lessee otherwise consents, from and after any such assignment all rentals and other payments made hereunder shall be paid by the Lessee to the account of the Lessor, care of the Vendor (or any assignee of the Vendor) and shall be applied by the Vendor (or such assignee) to satisfy the obligations of the Lessor under the Conditional Sale Agreement accrued at the time such payments are due hereunder and any balance shall be paid to the Lessor. All the rights of the Lessor hereunder (including but not limited to rights under §§ 2, 5, 6, 9 and 14) shall inure to the benefit of the Lessor's assigns (including the partners of any such assignee if such assignee is a partnership). Whenever the Lessor is referred to in this Lease it shall apply and refer to each assignee of the Lessor.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. In addition, the Lessee, at its own expense, will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance

unto affixed and duly attested, all as of the date first above written.

CAVAN EQUIPMENT CORPORATION,

by
President.

[CORPORATE SEAL]

Attest:

.....
Secretary.

THE CHESAPEAKE AND OHIO RAILWAY
COMPANY,

by
Treasurer.

[CORPORATE SEAL]

Attest:

..... APPROVED AS TO FORM
Assistant Secretary.

.....
GENERAL ATTORNEY

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this day of June, 1970, before me personally appeared to me personally known, who, being by me duly sworn, says that he is President of CAVAN EQUIPMENT CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

[NOTARIAL SEAL]

STATE OF MARYLAND }
CITY OF BALTIMORE } ss.:

On this day of June, 1970, before me personally appeared L. C. ROIG, JR., to me personally known, who, being by me duly sworn, says that he is the Treasurer of THE CHESAPEAKE AND OHIO RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

[NOTARIAL SEAL]

SCHEDULE A

<u>Type</u>	<u>Manufacturer's Specification</u>	<u>Manufacturer's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Delivery</u>
Cupola Type Cabooses	No. 386 dated 12/16/69	Kenton, Ohio	55	3260- 3314	\$25,800	\$1,419,000	June to August, 1970 F.O.B. Kenton, Ohio, for delivery to Marion, Ohio

ANNEX D

ASSIGNMENT OF PURCHASE AGREEMENT

KNOW ALL MEN BY THESE PRESENTS, that as of May 15, 1970, THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation (hereinafter called the Assignor), in consideration of the sum of \$10 and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, DOES HEREBY SELL, ASSIGN, TRANSFER AND SET OVER UNTO CAVAN EQUIPMENT CORPORATION, a New York corporation (hereinafter called the Assignee), all the Assignor's right, title and interest in and to the purchase agreement dated April 17, 1969, (hereinafter called the Purchase Agreement), between the Assignor and INTERNATIONAL RAMCO, INC. (hereinafter called the Manufacturer), in so far as it relates to the railroad equipment (hereinafter called the Equipment) described in Annex B to a Conditional Sale Agreement dated as of May 15, 1970 (hereinafter called the Conditional Sale Agreement), among the Assignee, the Assignor and the Manufacturer; together with all and singular the Equipment and all right, title and interest now owned or hereafter acquired by the Assignor in and to the Equipment and in and to the Purchase Agreement, except as provided in the Lease of Railroad Equipment, dated as of May 15, 1970, between the Assignor and the Assignee.

To have and to hold all and singular the Equipment and the Purchase Agreement to the Assignee and its assigns for its own use forever.

In furtherance of and not in limitation of the foregoing, the Assignor recognizes that, concurrent with the execution and delivery of this Assignment, the purchase of the Equipment is being arranged pursuant to the Conditional Sale Agreement and that the Conditional Sale Agreement permits (under Article 3 thereof) the exclusion of all or any portion of the Equipment from the Conditional Sale Agreement under the circumstances described therein. In respect thereof, the Assignor covenants with the Assignee and the Manufacturer, as a third party beneficiary hereof, that, in the event of any such exclusion of units of the Equipment from the Conditional Sale Agreement, the Assignor

will be obligated to accept all such units of Equipment and to pay the full purchase price therefor at the time of delivery, so long as such units of the Equipment shall have been completed and delivered by the Manufacturer, such payment to be made in cash on delivery of such units of Equipment, either directly or, in case the Assignor shall arrange therefor, by means of a conditional sale, equipment trust or other appropriate method of financing, as the Assignor shall determine; *provided, however*, that the Assignor warrants that none of the units of the Equipment has been delivered by the Manufacturer and no payment has been made in respect thereof to the Manufacturer.

The Assignor does hereby represent that it is the lawful owner, free from all encumbrances, of the Purchase Agreement and that the Assignor has the right to sell and assign the Purchase Agreement as set forth herein and that the Assignor will warrant and defend this Assignment against the lawful claims and demands of all persons.

Settlement for the units of Equipment to be acquired from the Manufacturer will be made under the Conditional Sale Agreement as provided in Article 3 of the Conditional Sale Agreement.

IN WITNESS WHEREOF, the Assignor has caused this Assignment to be duly executed as of the date first above written.

THE CHESAPEAKE AND OHIO RAILWAY
COMPANY,

by
Treasurer.

[CORPORATE SEAL]

APPROVED AS TO FORM

Attest:

.....
GENERAL ATTORNEY

.....
Assistant Secretary.

The foregoing Assignment is hereby
accepted as of May 15, 1970.

CAVAN EQUIPMENT CORPORATION,

by
President.

AGREEMENT AND ASSIGNMENT dated as of May 15, 1970, between the corporation first named following the testimonium below (hereinafter called the Manufacturer) and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, acting as Agent under a Finance Agreement dated as of May 15, 1970 (hereinafter called the Finance Agreement and said Trust Company, so acting, being hereinafter called the Assignee).

WHEREAS the Manufacturer, CAVAN EQUIPMENT CORPORATION (hereinafter called the Company), and THE CHESAPEAKE AND OHIO RAILWAY COMPANY (hereinafter called the Guarantor), have entered into a Conditional Sale Agreement dated as of May 15, 1970 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Company of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Manufacturer hereby assigns, transfers, and sets over unto the Assignee, its successors and assigns:

(a) All the right, security title and interest of the Manufacturer in and to each unit of the Equipment;

(b) All the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 2 thereof, in the first paragraph and in subparagraph (a) of the third paragraph of Article 3 thereof, in the last paragraph of Article 16 thereof and

reimbursement for taxes paid or incurred by the Manufacturer), and in and to any and all amounts which may be or become due or owing to the Manufacturer under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Company or the Guarantor under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited by subparagraph (b) of this paragraph, all the Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Manufacturer for or on account of the failure of the Company or the Guarantor to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however*, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Manufacturer to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained or referred to in Articles 14 and 15 of the Conditional Sale Agreement or relieve the Company or the Guarantor from their respective obligations to the Manufacturer contained or referred to in Articles 1, 2, 3, 6, 10, 14 and 15 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 16 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Company with respect to the Equipment shall be and remain enforceable by the Company, its successors and assigns, against and only against the Manufacturer. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of

the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Company and the Guarantor with the terms and agreements on their parts to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Manufacturer covenants and agrees that it will construct and deliver the Equipment to the Company in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees with, and warrants to, the Assignee and the Company that at the time of delivery of each unit of the Equipment to the Company under the Conditional Sale Agreement it will have legal title to such unit and good and lawful right to sell such unit, free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease (as defined in the Conditional Sale Agreement), and that the obligation of the Company to pay the Purchase Price of such unit and interest thereon in accordance with the terms of the Conditional Sale Agreement will not be subject to any defense, set-off or counterclaim whatsoever; and the Manufacturer further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to said delivery of such unit by the Manufacturer to the Company; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Company thereunder. The Manufacturer will not deliver any of the Equipment to the Company under the Conditional Sale Agreement until the Conditional Sale Agreement has been filed pursuant to Section 20c of the Interstate Commerce Act.

unto affixed and duly attested, all as of the date first above written.

CAVAN EQUIPMENT CORPORATION,

by
President.

[CORPORATE SEAL]

Attest:

.....
Secretary.

THE CHESAPEAKE AND OHIO RAILWAY
COMPANY,

by
Treasurer.

[CORPORATE SEAL]

Attest:

..... APPROVED AS TO FORM
Assistant Secretary.

.....
GENERAL ATTORNEY

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this day of June, 1970, before me personally appeared to me personally known, who, being by me duly sworn, says that he is President of CAVAN EQUIPMENT CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

[NOTARIAL SEAL]

STATE OF MARYLAND }
CITY OF BALTIMORE } ss.:

On this day of June, 1970, before me personally appeared L. C. ROIG, JR., to me personally known, who, being by me duly sworn, says that he is the Treasurer of THE CHESAPEAKE AND OHIO RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

[NOTARIAL SEAL]

SCHEDULE A

<u>Type</u>	<u>Manufacturer's Specification</u>	<u>Manufacturer's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Delivery</u>
Cupola Type Cabooses	No. 386 dated 12/16/69	Kenton, Ohio	55	3260- 3314	\$25,800	\$1,419,000	June to August, 1970 F.O.B. Kenton, Ohio, for delivery to Marion, Ohio

ANNEX D

ASSIGNMENT OF PURCHASE AGREEMENT

KNOW ALL MEN BY THESE PRESENTS, that as of May 15, 1970, THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation (hereinafter called the Assignor), in consideration of the sum of \$10 and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, DOES HEREBY SELL, ASSIGN, TRANSFER AND SET OVER UNTO CAVAN EQUIPMENT CORPORATION, a New York corporation (hereinafter called the Assignee), all the Assignor's right, title and interest in and to the purchase agreement dated April 17, 1969, (hereinafter called the Purchase Agreement), between the Assignor and INTERNATIONAL RAMCO, INC. (hereinafter called the Manufacturer), in so far as it relates to the railroad equipment (hereinafter called the Equipment) described in Annex B to a Conditional Sale Agreement dated as of May 15, 1970 (hereinafter called the Conditional Sale Agreement), among the Assignee, the Assignor and the Manufacturer; together with all and singular the Equipment and all right, title and interest now owned or hereafter acquired by the Assignor in and to the Equipment and in and to the Purchase Agreement, except as provided in the Lease of Railroad Equipment, dated as of May 15, 1970, between the Assignor and the Assignee.

To have and to hold all and singular the Equipment and the Purchase Agreement to the Assignee and its assigns for its own use forever.

In furtherance of and not in limitation of the foregoing, the Assignor recognizes that, concurrent with the execution and delivery of this Assignment, the purchase of the Equipment is being arranged pursuant to the Conditional Sale Agreement and that the Conditional Sale Agreement permits (under Article 3 thereof) the exclusion of all or any portion of the Equipment from the Conditional Sale Agreement under the circumstances described therein. In respect thereof, the Assignor covenants with the Assignee and the Manufacturer, as a third party beneficiary hereof, that, in the event of any such exclusion of units of the Equipment from the Conditional Sale Agreement, the Assignor

will be obligated to accept all such units of Equipment and to pay the full purchase price therefor at the time of delivery, so long as such units of the Equipment shall have been completed and delivered by the Manufacturer, such payment to be made in cash on delivery of such units of Equipment, either directly or, in case the Assignor shall arrange therefor, by means of a conditional sale, equipment trust or other appropriate method of financing, as the Assignor shall determine; *provided, however*, that the Assignor warrants that none of the units of the Equipment has been delivered by the Manufacturer and no payment has been made in respect thereof to the Manufacturer.

The Assignor does hereby represent that it is the lawful owner, free from all encumbrances, of the Purchase Agreement and that the Assignor has the right to sell and assign the Purchase Agreement as set forth herein and that the Assignor will warrant and defend this Assignment against the lawful claims and demands of all persons.

Settlement for the units of Equipment to be acquired from the Manufacturer will be made under the Conditional Sale Agreement as provided in Article 3 of the Conditional Sale Agreement.

IN WITNESS WHEREOF, the Assignor has caused this Assignment to be duly executed as of the date first above written.

THE CHESAPEAKE AND OHIO RAILWAY
COMPANY,

by
Treasurer.

[CORPORATE SEAL]

APPROVED AS TO FORM

Attest:

.....
GENERAL ATTORNEY

.....
Assistant Secretary.

The foregoing Assignment is hereby
accepted as of May 15, 1970.

CAVAN EQUIPMENT CORPORATION,

by
President.

AGREEMENT AND ASSIGNMENT dated as of May 15, 1970, between the corporation first named following the testimonium below (hereinafter called the Manufacturer) and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, acting as Agent under a Finance Agreement dated as of May 15, 1970 (hereinafter called the Finance Agreement and said Trust Company, so acting, being hereinafter called the Assignee).

WHEREAS the Manufacturer, CAVAN EQUIPMENT CORPORATION (hereinafter called the Company), and THE CHESAPEAKE AND OHIO RAILWAY COMPANY (hereinafter called the Guarantor), have entered into a Conditional Sale Agreement dated as of May 15, 1970 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Company of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Manufacturer hereby assigns, transfers, and sets over unto the Assignee, its successors and assigns:

(a) All the right, security title and interest of the Manufacturer in and to each unit of the Equipment;

(b) All the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 2 thereof, in the first paragraph and in subparagraph (a) of the third paragraph of Article 3 thereof, in the last paragraph of Article 16 thereof and

reimbursement for taxes paid or incurred by the Manufacturer), and in and to any and all amounts which may be or become due or owing to the Manufacturer under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Company or the Guarantor under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited by subparagraph (b) of this paragraph, all the Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Manufacturer for or on account of the failure of the Company or the Guarantor to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however*, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Manufacturer to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained or referred to in Articles 14 and 15 of the Conditional Sale Agreement or relieve the Company or the Guarantor from their respective obligations to the Manufacturer contained or referred to in Articles 1, 2, 3, 6, 10, 14 and 15 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 16 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Company with respect to the Equipment shall be and remain enforceable by the Company, its successors and assigns, against and only against the Manufacturer. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of

the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Company and the Guarantor with the terms and agreements on their parts to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Manufacturer covenants and agrees that it will construct and deliver the Equipment to the Company in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees with, and warrants to, the Assignee and the Company that at the time of delivery of each unit of the Equipment to the Company under the Conditional Sale Agreement it will have legal title to such unit and good and lawful right to sell such unit, free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease (as defined in the Conditional Sale Agreement), and that the obligation of the Company to pay the Purchase Price of such unit and interest thereon in accordance with the terms of the Conditional Sale Agreement will not be subject to any defense, set-off or counterclaim whatsoever; and the Manufacturer further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to said delivery of such unit by the Manufacturer to the Company; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Company thereunder. The Manufacturer will not deliver any of the Equipment to the Company under the Conditional Sale Agreement until the Conditional Sale Agreement has been filed pursuant to Section 20c of the Interstate Commerce Act.

The Manufacturer agrees that in any suit or proceeding brought by the Assignee to collect any instalment of the Conditional Sale Indebtedness, or interest thereon, or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off or counterclaim whatsoever of the Company or the Guarantor arising out of a breach by the Manufacturer of any obligation with respect to the Equipment or the construction, delivery or warranty thereof, or under Items 4 and 5 of Annex A to the Conditional Sale Agreement, or by reason of any defense, set-off or counterclaim whatsoever arising by reason of any other liability at any time of the Manufacturer to the Company or the Guarantor. The Assignee will give notice to the Manufacturer of any suit or proceeding by the Assignee herein described, and will move or take other appropriate action, on the basis of Article 16 of the Conditional Sale Agreement, to strike any defense, set-off or counterclaim asserted by the Company or the Guarantor therein, and if the court or other body having jurisdiction in such suit or proceeding denies such motion or other action and accepts such defense, set-off or counterclaim as a triable issue in such suit or proceeding, the Assignee will notify the Manufacturer thereof and the Manufacturer will thereafter be given the right by the Assignee, at the Manufacturer's expense, to settle or defend such defense, set-off or counterclaim.

Except in cases of designs, processes, and combinations, specified by the Guarantor and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Guarantor and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, process,

combination, article or material infringing or claimed to infringe on any patent or other right.

The Manufacturer agrees that any amount payable to it by the Company or the Guarantor, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien or charge on any units of the Equipment in respect of which the Assignee pays to the Manufacturer the amount to be paid under Section 5 hereof.

SECTION 3. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked on each side of each unit of the Equipment, at the time of delivery thereof to the Company, in letters not less than one inch in height, the following legend:

"MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,
AGENT, OWNER"

SECTION 4. Upon request of the Assignee, its successors and assigns, the Manufacturer will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Manufacturer therein or in the Equipment.

SECTION 5. The Assignee, on each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 3) of Equipment, shall pay to the Manufacturer an amount equal to that portion of the Purchase Price (as defined in said Article 3) of such Group not required to be paid pursuant to subparagraph (a) of the third paragraph of said Article 3, provided that there shall have been delivered to the Assignee (with a signed counterpart to the Company) the following documents, in such number of counterparts or copies as may reasonably be requested, in form and sub-

stance satisfactory to it and to its special counsel hereinafter mentioned:

(a) Bill of Sale from the Manufacturer to the Assignee, confirming the transfer to the Assignee of title to the units of the Equipment in the Group and warranting to the Assignee and to the Company that at the time of delivery to the Company under the Conditional Sale Agreement the Manufacturer had legal title to such units and good and lawful right to sell such units and title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease;

(b) Certificate or Certificates of Acceptance with respect to the units of Equipment in the Group as contemplated by Article 2 of the Conditional Sale Agreement and the Certificate or Certificates of Delivery pursuant to § 1 of the Lease;

(c) Invoices addressed to the Assignee for the units of the Equipment in the Group accompanied by or having endorsed thereon a certification by the Company and the Guarantor as to the correctness of the prices of such units as set forth in said invoices;

(d) Opinion dated such Closing Date of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and for the Investors named in the Finance Agreement, addressed to the Assignee, stating that (i) the Finance Agreement has been duly authorized, executed and delivered by the Guarantor and is a valid investment binding on the Guarantor and enforceable against the Guarantor in accordance with its terms, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a valid and binding instrument enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Manufacturer and is a valid and binding instru-

ment, (iv) the Assignee is vested with all the rights, titles, interests, power, privileges and remedies purported to be assigned to it by this Assignment, (v) security title to the units of the Equipment in the Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Company under the Conditional Sale Agreement, were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease, (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Finance Agreement, the Conditional Sale Agreement or this Assignment, or, if any approval is necessary it has been obtained, (vii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America, and (viii) registration of the Conditional Sale Agreement, this Assignment or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; and such opinion shall cover such other matters as the Assignee or any investor in such certificates of interest may reasonably request;

(e) Opinion dated such Closing Date of counsel for the Company, addressed to the Assignee, to the effect set forth in clauses (vii) and (viii) of subparagraph (d) above and stating that (i) the Company is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (ii) the Conditional Sale Agreement has been duly authorized, executed and

delivered on behalf of the Company and is a valid and binding instrument enforceable against the Company in accordance with its terms;

(f) Opinion dated such Closing Date of counsel for the Guarantor, addressed to the Assignee and the Company, to the effect set forth in clauses (i), (v), (vi) and (vii) of subparagraph (d) above, and stating that (i) the Guarantor is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation, and has the power and authority to own its properties and to carry on its business as now conducted and (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered on behalf of the Guarantor and is a valid and binding instrument enforceable against the Guarantor in accordance with its terms;

(g) Opinion dated such Closing Date of counsel for the Manufacturer, addressed to the Assignee and the Company, to the effect set forth in clauses (iv) and (v) of subparagraph (d) above and stating that (i) the Manufacturer is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (ii) the Conditional Sale Agreement and this Assignment have been duly authorized, executed and delivered by the Manufacturer and (assuming due authorization, execution and delivery by the other party or parties thereto) are valid instruments binding upon the Manufacturer and enforceable against the Manufacturer in accordance with their terms:

(h) In the case of the first Closing Date, the opinion of counsel required by the Pledge Agreement dated as of May 15, 1970, from the shareholder or shareholders of the Company to the Assignee; and

(i) Unless payment of the amount payable pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by

the Company, the receipt from the Manufacturer for such payment.

In giving the opinions specified in this Section 5, counsel may qualify any opinion to the effect that (i) any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally and (ii) such opinion does not pass upon questions involving interest on interest. In giving the opinions specified in subparagraphs (d), (e) and (f) of the first paragraph of this Section 5, counsel may in fact rely as to the title to the units at the time of delivery to the Company upon the opinion of counsel for the Manufacturer. In giving the opinions specified in subparagraphs (d) and (e) of the first paragraph of this Section 5, Messrs. Cravath, Swaine & Moore and counsel for the Company may in fact rely, as to any matters governed by the law of any jurisdiction other than New York or the United States, on the opinions of counsel for the Manufacturer or the Guarantor as to such matters.

The obligation of the Assignee hereunder to make payment for any Group of the Equipment is hereby expressly conditioned upon the prior receipt by the Assignee, pursuant to the Finance Agreement, of all the funds to be furnished to the Assignee by the Investors named in Schedule A to the Finance Agreement with respect thereto and upon payment by the Company of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement.

The Assignee shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement will constitute an event of default, shall be subsisting under the Conditional Sale Agreement.

In the event that the Assignee shall not make any payment to be made by it as herein provided, the Assignee shall

reassign to the Manufacturer, without recourse to the Assignee, all right, security title and interest of the Assignee in and to the units of Equipment with respect to which such payment has not been made by the Assignee.

SECTION 6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Company or the Guarantor thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 16 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the Company and the Guarantor) it is a valid and existing agreement binding upon the Manufacturer, the Company and the Guarantor, and that it is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary or appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be.

SECTION 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however*, that the parties shall be entitled to all the rights conferred by Section 20c

SECTION 9. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although this Assignment is dated as of May 15, 1970, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

INTERNATIONAL RAMCO, INC.,
(Manufacturer)

by

Paul F. Long
President of International
Car Co. Division

[CORPORATE SEAL]

Attest:

Norma L. Lusk
Asst. Secretary.

MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY, as Agent,

[CORPORATE SEAL]

by

Arthur C. Shoda
SENIOR Vice President.

Attest:

William H. Schuyler
Assistant Corporate Trust
Officer.

STATE OF NEW YORK }
COUNTY OF ERIE } ss.:

On this ^{8th} day of June, 1970, before me personally appeared KARL F. LONG, to me personally known, who, being by me duly sworn, says that he is President of International Car Co. Division of INTERNATIONAL RAMCO, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

Alfred J. Neumeister
Notary Public

ALFRED J. NEUMEISTER
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1972

STATE OF MARYLAND }
CITY OF BALTIMORE } ss.:

On this 11th day of June, 1970, before me personally appeared *Alton G. Shuler*, to me personally known, who, being by me duly sworn, says that he is a Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its By-laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

Dorothy E. Scharf
Notary Public

DOROTHY E. SCHARF
NOTARY PUBLIC
My Commission Expires July 1, 1970

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of May 15, 1970.

CAVAN EQUIPMENT
CORPORATION,

by *James S. Mello*
President.

THE CHESAPEAKE AND OHIO
RAILWAY COMPANY,

by *L. C. Roigh*
Treasurer.